

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Dwayne McFadden,

PETITIONER

v.

United States of America,

RESPONDENT

Crim. No. 4:04-cr-00564-TLW-1

C/A No. 4:16-cv-01505-TLW

Order

The Court directs the parties to brief the question of whether *Mathis v. United States*, 136 S. Ct. 2243 (2016) applies retroactively on collateral attack in this case, and the Government is directed to state whether they are waiving any potentially applicable statute of limitations defense. Additionally, the parties are directed to brief the impact of § 2255(h)(2) on this successive petition.¹

The parties are directed to file their briefs within 10 days of the date of this order. If either party needs additional time, the Court will consider an appropriate request.

IT IS SO ORDERED.

s/ Terry L. Wooten

Terry L. Wooten

Chief United States District Judge

November 4, 2016
Columbia, South Carolina

¹ The Court notes that in *King v. United States*, ___ F. Supp. 3d ___, 2016 WL 4487785 (S.D. Fla. 2016), the Government initially consented to § 2255 relief under *Mathis* for a petitioner with a burglary predicate conviction who was filing a successive petition. However, the Government later changed its position and opposed such relief. Judge Lenard ultimately dismissed the petition under § 2255(h)(2). The parties are to brief how the analysis in *King* does or does not apply in this case.